THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.33200 of 1997

Dated : 03.04.2007

Between:

Sanapala Sridharudu and others.

… **PETITIONERS**

And:

The Special Officer & Competent Authority,
Urban Land Ceiling, Visakhapatnam and another.

….**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.33200 of 1997

ORDER:

This writ petition is filed questioning the order, dated 20.01.1997, passed by the second respondent, dismissing the appeal preferred by the petitioners against the order of the first respondent dated 29.12.1992.

It is the case of the petitioners that in the year 1969, their parents purchased certain lands in Madhavadhara, Marripalem and Adivivaram villages at Visakhapatnam District from its owners for valuable consideration, and since the date of purchase, their family alleged to have been in possession and enjoyment of the said lands. Subsequently, the petitioners filed O.S.No.161 of 1972 on the file of the Court of the Subordinate Judge, Visakhapatnam for partition and in view of compromise between the parties, the suit was decreed and a compromise decree was passed on 12.10.1972. Thereafter, after the

Urban Land (Ceiling and Regulation) Act, 1976 (for short “the Act”), came into force, the petitioners filed declarations under Section 6(1) of the Act and after enquiry the first respondent passed provisional orders and thereafter final orders declaring that the petitioners are surplus land owners. Aggrieved by the final order dated 01.07.1982, the petitioners filed appeals before the second respondent stating that their lands shall be exempted in pursuance of G.O.Ms.No.733 dated 31.10.1988, and accordingly, the second respondent allowed the appeals and remanded the matter to the first respondent for reconsideration of the matter. However, the petitioners complain that the first respondent, without giving any opportunity to them passed an order holding that the lands situated in Adivivaram are inam lands held by Simhachalam Devasthanam and thereby excluded from the holding of the declarants and the lands in Madhavavaram and Marripalem villages lie in core area of Visakhapatnam Urban Agglomeration, but not in the peripheral are, and therefore, the same are not exempted under G.Os.Ms.No.733 dated 31.10.1988. Challenging the same, the petitioners preferred an appeal before the first respondent and the first respondent, without taking into consideration the documents filed by the petitioners, dismissed the appeals by order dated 20.01.1997 and thereby confirmed the order of the first respondent. Hence, this writ petition.

The first respondent filed a counter admitting the declaration filed by the petitioners under Section 6(1) of the Act, and passing of provisional and final orders and also the appeals filed by them before the second respondent questioning the final order, but the contention of the petitioners that their lands are in peripheral area is denied. It is stated in the counter that the lands situated at Adivivaram village, claimed by the petitioners are inam lands and as such no right vests with them, and that the lands at Madhavavaram and Marripalem villages are in the Urban Agglomeration and therefore, not exempted

from the provisions of the Act, and the petitioners cannot seek exemption under G.O.Ms.No.733 dated 31.10.1988. It is also stated in the counter that the petitioners filed declaration under Section 6(1) of the Act in individual capacity, but not in the capacity of joint family and that they have not produced any documentary evidence before the respondents and they have not appeared for enquiry despite service of notice, and therefore, considering the material on record, the respondents passed the impugned orders, which require no interference.

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue.

Having perused the order of the first respondent coupled with the counter, this Court is of the view that the first respondent has simply looked into the objections filed by the petitioners after setting them *ex parte*. The relevant portion in the reads thus:

> "The case was taken up for enquiry in pursuance of remand order and the declarants called on to attend for enquiry on11.2.1991, 12,2,1991, 3.4.1991, 27.4.1991, 17.5.1991, 5.6.1991, 25.6.1991, 9.7.1991, 24.7.1991. 27.7.1991, 22.8.1992 and 26.9.1992. Though the notices were served on the declarants their objections that the lands are agricultural lands lie in the peripheral area of the Urban Agglomeration. Hence, the declarants are set exparte and the matter is considered on merits."

From the above, it is not clear as to what prompted the first respondent to set the petitioners *ex parte.* In fact, this is one of the grounds raised by the petitioners in their appeal before the second respondent stating that without affording any opportunity, they were set *ex parte* and the matter was decided against them. The second respondent has also not looked into this aspect at all. Section 8(4) of the Act clearly lays down that the competent authority shall duly consider any objections received, within the period specified in the

notice referred to in sub-section (3) or within such further period as may be specified by the competent authority for any good and sufficient reason, from the person whom a copy of the draft statement has been served under that sub-section and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such others as it deems fit.

So, in view of the above proviso, the competent authority shall consider the objections of the declarants and also offer sufficient opportunity to them. Of course, if the petitioners have not attended for enquiry willfully, it is open for the authority to set them *ex parte* and pass appropriate orders. In the instant case, there is no mention that the petitioners have not attended for enquiry willfully, and therefore, they were set *ex parte,* and hence, the order was passed only considering the objections.

For the foregoing reasons, this Court is of the view that respondents 1 and 2 have passed the impugned orders without affording sufficient opportunity to the petitioners, and the same are liable to be set aside.

Accordingly, the writ petition is allowed setting aside the orders passed by respondents 1 and 2 dated 28.12.1992 and 20.01.1997, respectively. The first respondent is hereby directed to issue fresh notice to the petitioners and after affording sufficient opportunity to them shall pass appropriate orders in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

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03.04.2007

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